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NO. 89-1564

IN THE

Supreme Court of the United States

October Term, 1989

JAMES E. POOLE, JR., et. al.,

Appellants,

v.

EMMA GRESHAM, et al.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

MOTION TO AFFIRM

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QUESTIONS PRESENTED

1. Whether voting changes directed by a state court in a covered jurisdiction which alter election procedures previously precleared by the Attorney General are subject to Section 5?

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No. 89-1564

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

JAMES E. POOLE, JR., et al., Appellants,

v.

EMMA GRESHAM, et al., Appellees.

MOTION TO AFFIRM

Pursuant to Rule 16.1(c) Appellees move to affirm the judgment sought to be reviewed on appeal on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

STATEMENT OF FACTS

This is the second time this case has come before this Court. In the first appeal, the Court vacated the judgment of the three-judge court that certain voting changes

directed by a state court (including stopping the holding and scheduling of municipal elections) were subject to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, and remanded for consideration of the question of mootness. Poole v. Gresham, ___ U.S. ___, 109 S.Ct. 523 (1988), J.S.App., p. A-3. Four of the Justices (Brennan, White, Marshall and Blackmun) stated they would affirm the judgment of the district court.[1]

Following a hearing on remand, the three-judge court held that the case was not moot and reinstated its prior order. J.S. App., p. A-1. The question presented in this second appeal as framed by Appellants is identical to that in the first appeal. J.S., p. i.

Appellees are black residents of

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1. The judgment, rather than the reported decision of the Court, is reproduced at J.S.App., p. A-3, and omits the statement of the four Justices that they would affirm.

Keysville, Georgia, a majority black municipality of approximately 300 people in rural Burke County. Although Keysville was chartered in 1890, prior to the election held on January 4, 1988, the town had not held an election or had any municipal officials since approximately 1933. The 1988 January election was conducted pursuant to the order of the three-judge court in this case, Gresham v. Harris, 695 F.Supp. 1179 (N.D.Ga. 1988), vacated and remanded sub nom., Poole v. Gresham, supra, J.S.App., pp. A-4 - A-17, and the Attorney General's preclearance of new election procedures under Section 5. A copy of the preclearance letter is appended hereto at 1a.

Restoration of elected government in Keysville has been a battle fought overtly on racial lines. Blacks have strongly supported restoration because of their need for municipal services, such as water and sewerage and police and fire protection. Whites have

adamantly opposed restoration because they do not wish to be governed by black elected officials or pay for municipal services. Whites have repeatedly argued that the municipal boundaries of the town were indeterminable and that as a consequence elections could not be held.[2]

In an attempt to restore city government Appellees and other black residents of Keysville organized a town meeting in 1985 and chose superintendents to conduct new elections. Appellants, who are white and are opposed to restoration of municipal government, filed a law suit, Poole v. Lodge, Civ.

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2. They contend that the location of the schoolhouse, which was designated as the center of town in the 1890 act of incorporation, Ga. Laws 1890-91, Volume II, p. 657, and which was destroyed many years ago in a storm, is presently unknown and that as a consequence it is impossible to establish the boundaries of the town and conduct elections. Whites have also resorted to scare tactics telling elderly blacks that if government were restored they would lose their homes and racial violence would result.

No. 85-V-414 (Sup. Ct. Burke Cty. Ga.), and secured an injunction against the elections until county officials complied with all requirements of state law, including determining the municipal boundaries of Keysville.

Appellees filed the instant law suit on April 29, 1987 seeking declaratory and injunctive relief against the Governor for failing to appoint persons to the vacant city offices pursuant to state law. Also in 1987, the Georgia General Assembly enacted a statute for the purpose of establishing a method of restoring municipal government to Keysville by providing that in the event all the offices of a municipality were vacant, "the election superintendent of the county in which the municipality is located shall have the authority to call for a special election to fill the vacant offices and to conduct...the special election." O.C.G.A. §36-30-13. The statute also authorized the board of registrars for the county to prepare a list of

electors for the election.

The Attorney General of Georgia advised the Secretary of State by letter in August, 1987, that the new law was mandatory and that the election superintendent of Burke County was required to call and conduct special elections for Keysville.

After Section 5 preclearance of §36-30-13, Appellees moved to amend their federal complaint to add county officials as defendants charging that they had failed to call elections for Keysville as required by the new statute. Following the filing of the motion to amend, the election superintendent of Burke County, pursuant to §36-30-13, called an election for Keysville for January 4, 1988.

The call and date for the election, together with a map designating the boundaries of the town to be used in determining voter eligibility, were prepared by county officials and submitted to the Attorney General pursuant

to Section 5 of the Voting Rights Act.[3] The submission was precleared on December 9, 1987. Appendix, p. 1a.

On December 3, 1987, the plaintiffs in Poole v. Lodge, supra (Appellants here), filed a motion in their state court law suit to enjoin the January election on the ground that the boundaries of the town were indetermined. The court granted the motion and on December 31, 1987 entered an order enjoining the Keysville elections and further enjoining county officials from "undertaking any actions with regard to the scheduling or conducting of

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3. The map was prepared by the county tax assessor based upon his review of various deeds and plats recorded in the county courthouse. J.S.App., pp. A-41 - A-43. The county board of registrars then used the map to prepare the list of eligible voters for the January elections. Id., p. A-44. In submitting the map for preclearance, the county attorney advised the Attorney General that while setting the town boundaries "has been one of the problems that has confronted the county...we now believe that the boundaries have been reasonably determined, and the election can go forward."

municipal elections until such time as the municipal boundaries for the town of Keysville have been properly delineated in accordance with the requirements of law." J.S.App., p. A-29. The court also held that its order "is not subject to Section 5 preclearance." Id.

Appellees then filed a motion in this case for a temporary restraining order and a preliminary injunction enjoining county officials from implementing any of the voting changes in the state court order absent preclearance under Section 5. The district court as a single-judge court allowed Appellants (plaintiffs in Poole v. Lodge, supra) to participate in the hearing and over their objections, but with the consent of the Attorney General of Georgia and Burke County officials, issued a temporary restraining order on December 31, 1987 permitting the elections to go forward. J.S.App., p. A-9.

On the day of the elections, Joseph Cochran, Sr. (who later contested the results

of the election along with Appellant Muns and others) and Hassie Cochran filed an action with the Burke County board of registrars and the superintendent of elections challenging the eligibility of 41 town electors on the ground that the boundaries of the town had not been determined and that the residency of the voters could not be established. The challenge was heard and dismissed. There was no appeal. J.S.App., p. A-48.

There were two slates of candidates in the elections, one favoring restoration of municipal government and having the support of black residents, and the other opposing restoration and having the support of white residents. Voting in the elections was sharply polarized on the basis of race. See, J.S.App., p. A-48, and Rogers v. Lodge, 458 U.S. 613, 623 (1982) (finding "overwhelming evidence of bloc voting along racial lines" in elections for the Burke County Commission). Appellee Gresham was elected mayor and Appel-

lees C. Neely, M. Holland, A. Lewis and Morris were elected as members of council. Appellant Poole, who had only write-in opposition, was elected as the fifth council member.

Immediately after the January elections, local whites, including Appellant Muns, filed a challenge to the results alleging that the boundaries of the town were indeterminable and that it was impossible to ascertain who was a qualified voter or candidate. The contest was denied and the state court affirmed the results of the election "based upon the map and voter's list as submitted by the Burke County Board of Registrars and precleared and approved by the United States Attorney General." In Re: Contest of Election Results of the Keysville Municipal Elections Held January 4, 1988, Civ. No. 88-V-21 (Sup. Ct. Burke Cty. Ga.), J.S.App., p. A-52. The contestants did not appeal.

On January 14, 1988 the district court as

a three-judge court held a hearing on Appellees' motion for a preliminary injunction. The court granted the motion to intervene filed by Appellants and over their objections, but again with the consent of the Attorney General of Georgia and Burke County officials, granted preliminary injunctive relief. Thereafter, on June 30, 1988 the three-judge court granted permanent injunctive relief finding that the state court order "changed a previously precleared practice and therefore should also have been precleared." J.S.App., p. A-16. Appellants took their first appeal to this Court.

Appellees filed a motion to dismiss or affirm in which they argued, inter alia, that the appeal was moot in that both the Burke County board of registrars and the Superior Court of Burke County had issued intervening final judgments, based upon the Attorney General's preclearance, that the boundaries of Keysville had been legally determined for

purposes of conducting elections.

After remand from this Court in Poole v. Gresham, supra, for a determination of the mootness issue, the three-judge court, anticipating further litigation in the state court, concluded that the case was not moot.

> While it may be the effect of [Superior Court] Judge Grant's order and the decision of the Board of Registrars to fix the boundaries for the town of Keysville, it is not at all clear to us that [Superior Court] Judge Pickett will find that they have been 'properly delinated in accordance with the requirements of law.'....We conclude, therefore, that this controversy is not moot. (footnote omitted)
> J.S.App., p. A-1.

A regularly scheduled election was held for the mayor and council on January 2, 1989. New voting procedures used in the election (candidate qualifying period and fees, use of voting machines and use of the county registration list), as well as a municipal annexation, were submitted for preclearance and were approved by the Attorney General. Copies of the preclearance letters

are appended hereto at 4a and 7a.

Prior to the election, Joseph Cochran, Sr. and Hassie Cochran once again filed challenges to the eligibility of municipal voters. The board of registrars denied the challenges on January 2, 1989, concluding that:

> The boundaries of Keysville for purposes of conducting elections have been determined and the Board of Registrars is without authority to alter or vary those boundaries or any other election procedures which were submitted for preclearance by Burke County and Keysville officials and which were approved by the Attorney General under Section 5.

A copy of the order of the board of registrars is appended hereto at 9a.

Incumbents Gresham, Lewis, Holland, Morris and Neely were reelected. Ollie Mae Lane, also black, was elected to council Post 1. The defeated white candidates filed a challenge to the results, but have not prosecuted it.

The state has refused to seek implementation of the changes contained in the

superior court order by submitting them for Section 5 review. According to the Attorney General of Georgia, the "precleared boundaries are the current lawful boundaries of Keysville," while

> preclearance [of the voting changes directed in the state court order] ...would lead to a retrogression in the ability of the black citizens of Keysville to exercise their electoral franchise. In fact, the preclearance of the order would destroy the ability to exercise the franchise in its entirety....As such, the Attorney General cannot in good faith submit such a change for preclearance.
> In Re: Contest of Election Results of the Keysville Municipal Elections Held January 4, 1988, supra, Motion for Reconsideration by the Attorney General

of Georgia, p. 3.[4]

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4. Since their election, the mayor and council have tried to govern Keysville - despite strong opposition by whites. In April, 1988 they adopted a license ordinance charging a small tax for conducting business in the town. The Keysville Convalescent and Nursing Center, Inc., which is owned and operated by Appellants Marshall and Harmon, filed suit against Keysville in state court on August 11, 1988 seeking a declaration that it was not required to pay a license fee or tax because it was impossible to tell if the nursing center was inside or outside the town's boundaries. See, Keysville Convalescent and Nursing Center, Inc. v. City of Keysville, Georgia, Civ. No. 88-V-280 (Sup. Ct. Burke Cty. Ga.). A second group of whites, including Appellants Poole, Muns, Way, Marshall and Harmon, filed another suit against Keysville on August 24, 1988 in state court seeking a declaration that the 1988 annexation was null and void because the boundaries of the town were indeterminable. See, Poole v. City of Keysville, Georgia, Civ. No. 88-V-293 (Sup. Ct. Burke Cty. Ga.). The city removed both cases to federal court where they are presently pending. See, Poole v. City of Keysville, Georgia, Civ. No. CV 188-184 (S.D.Ga.), and Keysville Convalescent and Nursing Center, Inc. v. City of Keysville, Georgia, Civ. No. CV 188-183 (S.D.Ga.).

ARGUMENT

I. The Questions Are Unsubstantial

It is undisputed that Appellants, a group of disgruntled whites who oppose the restoration of municipal government in Keysville, are the only parties contending that preclearance of the voting changes contained in the state court order is not required. J.S.App., p. A-12. The Attorney General of Georgia and the election officials of Burke County agree with Appellees that the new voting procedures at issue are subject to Section 5 review.

The arguments made by Appellants are exceedingly narrow and artificial. They do not dispute that Keysville is covered by Section 5 or that voting changes directed by state courts, including changes in the dates of elections, are subject to preclearance. J.S., pp. 12, 16, and J.S.App., p. A-11. Appellants' arguments are that the "delay" of an election is not a covered change, J.S., pp. 11-2, and that even if it were, the changes in

this case were incident to the enforcement of previously precleared state law and are therefore not subject to Section 5. J.S., p. 16.

Appellants' first contention is plainly incorrect. As the three-judge court found, "it is clear that the order did, at the least, change the date of the election, if not halt it altogether. A change in the date of an election...requires approval by the Attorney General under section 5. NAACP v. Hampton County Election Commission, 470 U.S. 166, 178 (1985)." J.S.App., p. A-12. Accord, Lucas v. Townsend, ___ U.S. ___, 108 S.Ct. 1763, 1765 (1988)(Kennedy, Circuit Justice).

Department of Justice regulations governing the administration of Section 5 also provide that changes in the time of holding elections are covered by the statute. See, 28 CFR §51.17(a)("The conduct of a special election...is subject to the preclearance requirement to the extent that the jurisdiction makes changes in the practices or

procedures to be followed.").[5]

Appellants' second contention, as the three-judge court found, is simply contrary to the prior decisions of this Court. In NAACP v. Hampton County Election Commission, 470 U.S. 166 (1985), the Department of Justice precleared on November 19, 1982 a state statute calling for special elections for a county school board to be held at the time of the November general election. Following the belated preclearance, county officials set March 15, 1983 as a new date for the election. They contended, precisely as the Appellants do here, that "because the rescheduling [of the election] in this case

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5. Other voting changes in the state court order included altering or denying the authority of election superintendents to call elections and registrars to define the electorate and prepare voters' lists pursuant to O.C.G.A. §36-30-13, and ruling that the town boundaries could not be determined at all when county officials had concluded otherwise. J.S.App., p. A-15.

was merely an administrative effort to comply with a statute that had already received clearance, it was not a change of such magnitude as to trigger the requirements of § 5." 470 U.S. at 178, 180. This Court disagreed. It held that the disputed change was required to be precleared under Section 5. 470 U.S. at 181.

Appellants' reliance upon the district court's opinion in Williams v. Sclafani, 444 F.Supp 895 (S.D.N.Y. 1977) is misplaced. As the three-judge court noted here, the holding in Williams was based largely on the district court's conclusion that state court orders were exempt from Section 5 review. J.S.App., pp. A-14; 444 F.Supp. at 903-04. That holding was repudiated by Hathorn v. Lovorn, 457 U.S. 255 (1983), decided five years later.

Appellants concede that the setting of an election by the state court, even if undertaken to comply with previously precleared state law, would be a voting change required

to be precleared under Section 5. J.S., p. 16 ("Had the Superior Court's Order in this case dictated that all Keysville municipal elections would, thereafter, be held on a different date, that Order would be subject to preclearance."), and p. 12. Accord, 28 CFR §51.17(b)("Any discretionary setting of the date for a special election or scheduling of events leading up to or following a special election is subject to the preclearance requirement."). Appellants do not explain, however, why the setting of an election date should be covered by Section 5 while the alteration of the date, or the halting or delaying, of elections should not be covered by Section 5. Both have the potential for discrimination and for that reason both are covered by Section 5. NAACP v. Hampton County Election Commission, supra, 470 U.S. at 181. Also see, Hadnott v. Amos, 394 U.S. 358, 365-66 (1969)(rescheduling of a candidate quali-

fying period is a covered voting change).[6]

There is no basis in Section 5 jurisprudence for the artificial distinction argued for by the Appellants between the "delay" of an election and the change in the date of an election. As this Court has repeatedly stated, Section 5 must be given "the broadest possible scope" to reach any practice "which alter[s] the election law of a covered State in even a minor way." Allen v. State Board of Elections, 393 U.S. 544, 566-67 (1969); City of Pleasant Grove v. United States, ___ U.S. ___, 107 S.Ct. 794, 798 (1987). Also see, 28 CFR §51.12 (1987) (requiring the submission of any change in voting "even

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6. While the merits of the changes in question are not involved in this appeal, McCain v. Lybrand, 465 U.S. 236, 250 (1984), there is no doubt that they have the potential for discrimination. As the Attorney General of Georgia has noted, the effect of implementation of the new procedures would be to turn recently elected black officials out of office and disfranchise minority voters in Keysville.

though it appears to be minor or indirect").

This Court has consistently defined Section 5 broadly, stressing that the statute is not a mere inventory of voting procedures but is concerned with "the reality of changed practices as they affect Negro voters." Georgia v. United States, 411 U.S. 526, 531 (1973). Congress, expressly approving the broad definition of Section 5 adopted by this Court and the Attorney General, has extended the preclearance provisions of the Voting Rights Act on three different occasions, in 1970, 1975 and 1982. 84 Stat. 314; 89 Stat. 402; 96 Stat. 131; City of Pleasant Grove v. United States, supra, 107 S.Ct. at 798; Dougherty County, Ga. v. White, 439 U.S. 32, 38-9 (1978); S.Rep. No. 97-417, p. 9 (1982), U.S. Code & Admin. News 1982, p. 186.

Given the broad scope of Section 5, the settled case law and the legislative history of the statute, the question whether the voting changes at issue in this appeal are

subject to preclearance is so unsubstantial as not to warrant further argument.

II. The Fact that a Jurisdiction May Be in Violation of State Law Is not a Defense for Failing to Comply with Section 5

The fact that a covered jurisdiction may be in violation of state law is no basis for non-compliance with Section 5 when it seeks to implement a voting change. In Perkins v. Matthews, 400 U.S. 379 (1971), the City of Canton, Mississippi elected its aldermen by ward elections in violation of a 1962 state law that required aldermen to be elected at-large. At the elections in 1969, the city, in an effort to comply with state law, attempted to implement at-large elections. In an action by local voters and candidates to require preclearance of the at-large elections, the city argued that it had no other choice than to comply with the 1962 state law in the 1969 elections and that doing so was not a change in voting subject to Section 5. This Court

held that conducting at-large elections, even if district elections were in violation of state law, was a change in voting that could not be implemented without Section 5 pre-clearance. Accord, City of Lockhart v. United States, 460 U.S. 125, 132 (1983)(whether local officials were seeking to act in conformity with state law was "essentially irrelevant" in evaluating the effect of a voting change); Hathorn v. Lovorn, supra, 457 U.S. at 256, n. 16 ("§ 5 comes into play whenever a covered jurisdiction departs from an election procedure that was "in fact 'in force or effect'...on November 1, 1964." Perkins v. Matthews").

By analogy to Perkins, even if the elections in Keysville were in violation of state laws governing the location of municipal boundaries, or were in violation of a state court order, the county's failure to conduct the elections would still be a covered

change.[7] Such a result is compelled, not only by the decisions of this Court, but by the Supremacy Clause of Article VI of the Constitution.

Appellants complain that if the decision of the three-judge court were affirmed it would deprive state courts of the ability to enforce state election laws. J.S., pp. 12-

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7. The benchmark for determining a voting change is ordinarily the practice in force or effect on November 1, 1964. Perkins v. Matthews, supra, 400 U.S. at 395. As the three-judge court found, however, where intervening changes have been enacted and precleared they become the appropriate benchmark for determining voting changes and administering Section 5. J.S.App., p. A-13. Also see, Busbee v. Smith, 549 F.Supp 494, 498 (D.D.C. 1982)(voting change was a congressional reapportionment enacted in 1981 different from that enacted in 1972), aff'd, 459 U.S. 1166 (1983); Edge v. Sumter County School District, 775 F.2d 1509, 1512 (11th Cir. 1985)(a court should ordinarily reinstate "the last valid plan in effect" in fashioning a Section 5 remedy); NAACP, DeKalb County Chapter v. Georgia, 494 F.Supp. 668, 676 (N.D.Ga. 1980); 28 CFR §51.54(d)("the comparison shall be with the last legally enforceable practice or procedure used by the jurisdiction").

3. To the contrary, states are always free to enforce their election laws, provided they do so in conformity with Section 5.

III. The Attorney General Can Evaluate the Changes Presented

Appellants argue that preclearance should not be required of the changes directed by the state court because they are not capable of being evaluated by the Attorney General or the United States District Court for the District of Columbia. J.S., p. 17. To demonstrate this alleged difficulty of evaluation, Appellants pick out four of the factors listed in the Section 5 regulations which the Attorney General may consider in resolving a submission, e.g., the extent to which minorities were consulted or whether their concerns were taken into account. J.S., pp. 17-8. The regulations, however, provide that the Attorney General should also consider, inter alia, the requirements of the

constitution and statutes designed to safeguard the right to vote and the relevant decisions of the Supreme Court and other federal courts. 28 CFR §§51.54 - 61. Not every factor identified in the regulations will be relevant in every case, but the Attorney General would surely be able to evaluate the purpose and effect of the changes involved in this appeal under existing Section 5 standards, which are far more extensive than Appellants have indicated.[8]

In addition, the Attorney General would not be required to "second guess" the state court judge. J.S., p. 18. The Attorney General considers only whether a voting change is free of racial purpose or effect in light

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8. Appellants concede, as they must, that the court ordered changes in Hathorn v. Lovorn, supra, would be "easy" to review under Section 5. J.S., p. 18. Their analysis fails to explain, however, why the changes involved here should be regarded any differently.

of applicable constitutional, statutory and decisional voting rights law. 28 CFR §51.51, et seq. By granting preclearance he does not certify that a submission "satisfies any other requirement of the law beyond Section 5." 28 CFR §51.49. The Attorney General is not, therefore, an appellate body reviewing the merits of state court orders, either under state law or non-Section 5 standards. The Attorney General in fact does not review state court orders as such, but only voting practices enacted or implemented by covered jurisdictions - including those directed by state courts.

The voting changes which county officials were directed to implement in this case can be easily evaluated by the Attorney General or the United States District Court for the District of Columbia under current Section 5 standards.

IV. There Is an Absence of any Conflict of Opinions

The decision of the three-judge court should be affirmed because there is an absence of any conflict between it and the decisions of this Court and lower federal courts.

Conclusion

The judgment sought to be reviewed on appeal should be affirmed on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

Respectfully submitted,

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S9822-9826

December 9, 1987

Preston B. Lewis, Jr., Esq.
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Dear Mr. Lewis:

This refers to the reestablishment of the Town of Keysville governed by a mayor and five councilmembers elected at large, with numbered positions and a majority vote requirement, to one-year concurrent terms with municipal elections held on the first Monday in January, the establishment of a polling place, and the procedures for conducting the January 4, 1988, special election for the town in Burke County, Georgia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We recieved your initial submission on September 15, 1987; supplemental information was

received on November 10, November 20, and November 24, 1987. In accordance with your request, expedited consideration has been given this submission pursuant to the Procedures for the Administration of Section 5 (28 C.F.R. 51.34).

The Attorney General does not interpose any objections to the changes in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. In addition, as authorized by Section 5, the Attorney General reserves the right to reexamine this submission if additional information that would otherwise require an objection comes to his attention during the remainder of the sixty-day review period. See also 28 C.F.R. 51.41 and 51.43.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

By: s/Mark A. Posner
For Gerald W. Jones
Chief, Voting Section

JPT:LLT:CEI:rac
DJ 166-012-3
Y0610-0611
Y1011-1012

December 29, 1988

Lewis Pitts, Esq.
Christic Institute South
P. O. Box 1105
Chapel Hill. North Carolina 27514

Dear Mr. Pitts:

This refers to the candidate qualifying period and fees, use of voting machines, and electing to use the county registration list for municipal elections in the Town of Keysville in Burke County, Georgia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your initial submission on December 7, 1988; supplemental information was received on December 8, 1988. In accordance with your request, expedited consideration has been given this submission pursuant to the Procedures for the Administration of Section 5 (28 C.F.R. 51.34).

The Attorney General does not interpose

any objections to the changes in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. In addition, as authorized by Section 5, the Attorney General reserves the right to reexamine this submission if additional information that would otherwise require an objection comes to his attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Sincerely

James P. Turner
Acting Assistant
Attorney General
Civil Rights Division

By: s/Lora L. Tredway

for Barry H. Weinberg
Acting Chief,
Voting Section

cc: Laughlin McDonald, Esq.
ACLU Foundation, Inc.

Honorable E. R. Gresham
Mayor

JPT:LLT:CEI: rac
DJ 166-012-3
Y0880

December 29, 1988

Lewis Pitts, Esq.
Christic Institute South
P. O. Box 1105
Chapel Hill, North Carolina 27514

Dear Mr. Pitts:

This letter refers to the November 25, 1988 annexation to the Town of Keysville in Burke County, Georgia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on December 19, 1988. In accordance with your request, expedited consideration has been given this submission pursuant to the Procedures for the Administration of Section 5 (28 C.F.R. 51.34).

The Attorney General does not interpose any objection to the change in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act

expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. In addition, as authorized by Section 5, the Attorney General reserves the right to reexamine this submission if additional information that would otherwise require an objection comes to his attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Sincerely,

James P. Turner
Acting Assistant
Attorney General
Civil Rights Division

By: s/Lora L. Tredway

for Barry H. Weinberg
Acting Chief
Voting Section

cc: Laughlin McDonald, Esq.
ACLU Foundation, Inc.

BOARD OF REGISTRARS
BURKE COUNTY, GEORGIA

IN RE: Challenge to Electors,
Keysville, Georgia

ORDER

These are challenges to the eligibility of certain electors at the January 2, 1989 election for the Mayor and City Council of Keysville (Burke County), Georgia on the grounds that such electors are not actual residents of Keysville. The Board of registrars has fully considered the challenge and makes the following findings and conclusions:

1. The challenged electors all reside within the boundaries of Keysville as previously precleared by the Attorney General of the United States pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, on December 9, 1987 and December 29, 1988.

2. The boundaries of Keysville for purposes of conducting elections have been determined and the Board of Registrars is

without authority to alter or vary those boundaries or any other election procedures which were submitted for preclearance by Burke County and Keysville officials and which were approved by the Attorney General under Section 5.

3. A challenge to electors virtually identical to this one was previously presented to and rejected by this Board in connection with the municipal election in January 4, 1988. Application to Burke County Board of Registrars and to the Elections Superintendent of the Board of Elections of Burke County, Georgia Challenging Certain Electors, Transcript of Meeting to consider Challenges in Regard to Municipal Election Held on Monday, January 4, 1988 at 7:13 P.M. at Heritage House, Keysville, Georgia, p. 11. The challenges here have presented no new or different evidence from that previously considered and rejected by this Board as a valid basis for challenging any elector.

4. A chllenge was filed to the results of the election held on January 4, 1988 on grounds virtually identical to those in the instant case, that the boundaries of Keysville were indeterminable and that it was impossible to ascertain who was a qualified voter or candidate. The contest was denied and the Supreme Court affirmed the results of the election "based upon the map and voters' list as submitted by the Burke County Board of Registrars and precleared and approved by the United States Attorney General." In Re: Contest of Election Results of the Keysville Elections Held January 4, 1988, Civ. No. 88-V-21 (Sup. Ct. Burke County, Ga. May 12, 1988).

5. For the above and foregoing reasons, the challenges are without merit and are denied.

This 2nd day of January, 1989.

s/

Board of Registrars
Burke County, Georgia